

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PATRA, LLC, &
ILIAS GIANNAKOPOULOS,
Plaintiffs,

v.

MOTIVA ENTERPRISES, LLC, &
STEVE L. SANTORO,
Defendants.

Docket No. 1:05-cv-11471

**DEFENDANTS' MOTION TO DISMISS, WITH PREJUDICE,
COUNTS V and VIII OF PLAINTIFFS' COMPLAINT, OR IN THE
ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS AS TO THOSE
COUNTS ONLY**

Pursuant to F.R.C.P. 12(b)(6), defendants Motiva Enterprises, LLC and Steve L. Santoro (collectively "Defendants"), hereby move to dismiss Count V (breach of fiduciary duty) and Count VIII (class action) of the Complaint. In the alternative, Defendants move for judgment on the pleadings as to these counts pursuant to F.R.C.P. 12(c) and 12(h)(2).¹ In support of this Motion, as more fully set forth in the Memorandum of Law filed herewith, Defendants state that Count V and Count VIII of the Complaint fail to state claims upon which relief may be granted, and accordingly, these counts should be dismissed.

WHEREFORE, defendants Motiva Enterprises, LLC and Steve L. Santoro respectfully request that this Court dismiss Count V and Count VIII of the Complaint forthwith, or in the alternative, allow judgment on the pleadings as to these counts.

¹ In filing the instant motion, Defendants explicitly do not waive their rights to assert any other affirmative defenses to the plaintiffs' claims, and reserve the right to move for relief at any appropriate time during the pendency of this action.

REQUEST FOR ORAL ARGUMENT

Defendants request oral argument on this motion.

Respectfully submitted,

Dated: August 22, 2005

**MOTIVA ENTERPRISES, LLC., and
STEVE L. SANTORO**
By Their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22nd, 2005, I have served the above document upon all counsel of record listed below.

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/s/ Melissa Wangenheim
Melissa Wangenheim